IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

RPFC.No. 67 of 2004(A)

MC.280/2002 of FAMILY COURT, MAJERI.
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REVISION PETITION/RESPONDENT:

KONIYATH MUHAMMED ALI,
S/O. LATE SAIDALAVI, KUTTIYIL HOUSE,
PRAYAG ROAD, PARAPPANANGADI P.O.,
THIRURANGADI TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.K.N.PADMAKUMAR

RESPONDENTS: PETITIONERS:
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1. CHONARI KADEEJA, D/O. AHAMMED KUTTY,
MULLANKUZHI HOUSE, KUNNATHUPARAMBU,
MUNNIYOOR SOUTH P.O, MUNNIYOOR DESOM,
THIRURANGADI TALUK, MALAPPURAM DISTRICT.

2. SHABANA BINCY (MINOR-DAUGHTER),
REPRESENTED BY THE 1ST PETIONER-GUARDIAN-MOTHER.

3. THE STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.BABU S. NAIR
SRI. C.K. SURESH, PUBLIC PROSECUTOR

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL. M.A. NO. 6000/2004 IN R.P.(F.C) NO. 67/2004

CLOSED

22.11.2007 SD/- K. R. UDAYABHANU, JUDGE.

/True Copy/

P.A to Judge.

K.R. UDAYABHANU, J

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R.P.(F.C.) NO. 67 OF 2004

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Dated this the 22nd day of November, 2007

O R D E R

The revision petitioner, who is the respondent/husband instituted in the proceedings by the divorced wife for the maintenance of the 2nd petitioner-minor child. The case of the revision petitioner/respondent is that the 2nd petitioner, the minor child is not born to him. It is admitted that the revision petitioner married the 1st respondent on 18.11.1999 and the 2nd petitioner was born on 26.06.2000. He went abroad after two weeks of marriage. According to him, she concealed the fact that she is conceiving at the time of marriage itself.

2. It is seen that the divorce was effected subsequent to the filing of the petition for maintenance. The evidence adduced in the matter consisted of the testimony of PWs 1 to 3, Exts.P1 to P4, C1 and RW1.

3. PW1 is the 1st petitioner/wife. PWs 2 and 3 are the paediatrician and gynecologist who attended the child and the mother at the time of delivery and subsequently. Exts. P1 and P1

(a) are the letters allegedly sent by the revision petitioner to the 1st petitioner and her father. Exts. P2 to P4 are the medical records of delivery etc. Ext.C1 is the D.N.A profile test report. The D.N.A test is conducted as per the order of the court. The counsel for the revision petitioner has relied heavily on the D.N.A test report wherein it is mentioned that the revision petitioner is not the biological father of the child. It is found from the evidence of PWs 2 and 3, the doctors and Exts. P2 to P4 that the 1st petitioner had premature delivery. The delivery was after 224 days of marriage. The court below has relied from conclusive presumption vide Section 112 of the Evidence Act.

4. I find that the statement of law on the point is that D.N.A test report cannot be relied exclusively to disprove the paternity. The decision of the Supreme Court relied on is in **Kamti Devi v. Poshi Ram** (2001 Supreme Court Cases (Cri) 892) and the decision of this Court following the above decision in **Sajitha v. State of Kerala** (2002 (3) KLT 762 to the effect that non-access should be proved apart from the D.N.A test result. In the instant case, it is the admission of the revision

petitioner itself as evident from the counter filed that he left abroad after two weeks of marriage. He has no case of non-access during the 1st week of marriage. In the circumstances, and so far as the proceedings under Section 125 Cr.P.C is concerned, I find that the evidence adduced is not sufficient to deny the maintenance to the 2nd petitioner in M.C. In the circumstances, I find no merit in the revision petition filed.

The revision petition is accordingly dismissed.

K.R. UDAYABHANU, JUDGE.

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